

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHUCK CHAIYAKUL,

Case No.: 2:21-cv-01667-APG-VCF

Petitioner

**Order**

v.

WARDEN OF HIGH DESERT, et al.,

Respondents

Chuck Chaiyakul has submitted a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 (ECF No. 1-1) and he has paid the filing fee (ECF No. 6). I dismiss the petition without prejudice as unexhausted.

A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of the claims before she or he presents those claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has given the highest available state court the opportunity to consider the claim through direct appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

In his federal petition, Chaiyakul sets forth a single ground of ineffective assistance of counsel. ECF No. 1-1, p. 3. He also indicates on the face of his petition that his appeal from the denial of his state postconviction habeas corpus petition is currently pending before the Nevada

1 Supreme Court. *Id.* at 4; *see also* Nevada Supreme Court Case No. 83822. Thus, he has not yet  
2 exhausted his state-court remedies. Further, the decision on his state petition could render this  
3 action moot. Accordingly, this federal petition is dismissed without prejudice as unexhausted.

4 I THEREFORE ORDER the Clerk to detach and file the petition (ECF No. 1-1).

5 I FURTHER ORDER that the petition is **DISMISSED** without prejudice.

6 I FURTHER ORDER that a certificate of appealability is DENIED.

7 I FURTHER ORDER the Clerk to send petitioner one copy of the filing at ECF No. 1-1.

8 I FURTHER ORDER the Clerk to enter judgment accordingly and close this case.

9 Dated: December 1, 2021



10 U.S. District Judge Andrew P. Gordon  
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